Supreme Court, U. S.
FILED
AUG 13 1976
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1975

NO. 76-54

WILLIAM BRUCE BOURGEOIS, JR.
and
NANCY A. MAYO,
Petitioners

versus

SEAFARERS PENSION PLAN a/k/a
SEAFARERS WELFARE PLAN,
Respondents

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

C. PAUL BARKER
DODD AND BARKER
A Law Corporation
1400 Richards Building
New Orleans, Louisiana 70112
(504-586-9395)

OF COUNSEL
HOWARD SCHULMAN
SCHULMAN, ABARBANEL
& SCHLESINGER
350 Fifth Avenue
New York, New York 10001

Counsel for Respondents

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

INDEX

PAGE NO.

Jurisdiction 1

Questions presented 1

Regulations and Statutory provisions involved 2

Statement of the case 3

A. The decision of the district court 3

B. The creation and composition of the Seafarers Pension Plan 5

C. Facts as to claimant 7

Reasons for denying the writ..... 8

Argument I. There is no substantial federal question here involved..... 8

Argument II. The district court had all of the material facts before it when it granted summary judgment 9

Argument III. The provisions of the Plan and the Trustees' action in applying it were neither arbitrary nor capricious 11

INDEX (Page 2)

PAGE NO.

Argument IV. The court below properly decided the case on the evidence before it and properly applied the law prevailing in Louisiana and New York and in the federal courts that Bourgeois was disqualified 13

Conclusion 15

Certificate of Service 17

Appendix A. 18

CITATIONS

PAGE NO.

CASES:

Bowen vs. Board of Trustees of the Police Pension Fund, 76 So. 2d 430, Ct. App. Orl. 1954 14

Davis vs. Humble Oil & Refining Co., 273 So. 2d 743 (CA 1, 1973) 15

Gaydosh vs. Lewis, 410 F.2d 262 (CA DC 1969) 15

Gittleson vs. Dupont, 215 N.E. 2d 336 15

Gomez vs. John L. Lewis, 414 F.2d 1312 (CA 3, 1969) 15

Knoll vs. Phoenix Steel Corp., 465 F.2d 1128 (CA 3, 1973). 15

Kristt vs. Wheland, 64 NYS 2d 239, (Appeals Division), Aff. 181 NYS 205 (1957) 14

Lowenstern vs. I.A.M., 479 F.2d 1211 (CA 2, 1973) ... 15

Schneider vs. McKesson & Robbins, Inc., 254 F.2d 827 (CA 2, 1958). 15

State of Louisiana ex rel Murray vs. Board of Trustees of the Police Pension Fund for the City of New Orleans, 259 So. 2d 613, La. App. 4th Cir. 1972. 14

REGULATIONS AND STATUTES

	PAGE NO.
29 U.S.C. 186	3, 5, 8
38 U.S.C. 331	2, 13
5th Circuit Local Rule 21	2
LSA C.C. Art. 3544	2
N.Y.C.P.A. Sec. 53	2
N.Y.C.P.L.R. Sec. 213	2
N.Y.C.P.L.R. Sec. 218(b)	2
Public Law 93-406, 88 Stat. 829, Title 29 §1001	8
Public Law 94-12, Title 4 ¶402, 89 Stat. 47, Title 26 ¶410	9
Seafarers' Pension Regulations Art. 1, Sec. 8	4,11

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

NO.

WILLIAM BRUCE BOURGEOIS, JR. and
NANCY A. MAYO
Petitioners

versus

SEAFARERS PENSION PLAN a/k/a
SEAFARERS WELFARE PLAN
Respondents

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Defendants-Appellees in the court below, Seafarers Pension Plan a/k/a Seafarers Welfare Plan, Respondents, hereinafter called Seafarers, respectfully oppose the granting of a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on April 7, 1976.

JURISDICTION

The statement of jurisdiction is correct.

QUESTIONS PRESENTED

Seafarers challenge the questions presented and respectfully suggest that the only two questions at issue are:

1. Whether the district court had before it all material evidence necessary for a summary judgment.

2. Whether the granting of the summary judgment was correct.

Seafarers deny that there was any issue of material fact to be resolved by the court on the motion for summary judgment; they further deny that the interpretation of Article 8 of the Seafarers Pension Regulations was a matter of intent; they further deny that the provisions of the Plan and the actions of the Trustees were arbitrary and capricious or that there had been a waiver of the disqualification provisions; the district court applied neither New York nor Louisiana law but the provisions of the Trust Agreement; Local Rule 21 of the United States Court of Appeals for the Fifth Circuit was properly applied.

REGULATIONS AND STATUTORY PROVISIONS INVOLVED

Seafarers respectfully suggest that 38 U.S.C. §331 is in no way involved. This definition of disability under the veterans' pension statutes is not before the Court for interpretation. It was raised by petitioner, complainant-appellant below, in argument in their brief to the Fifth Circuit and was answered by way of argument by defendants-appellees below. It does not require interpretation.

Fifth Circuit Rule 21 is not before the Court for interpretation and was properly applied in this case. Louisiana Civil Code Article 3544, New York Civil Practice, Section 53, New York Practice Law and Rules, Section 213, and New York Civil Practice Laws and Rules, Section 218 (b) were not the

basis of the decision by the district court as affirmed by the Circuit Court and hence are not before the Court for interpretation.

Seafarers Pension Regulations Article I Section 8 is not a federal statute but a material fact considered by the court.

The only statute before the Court is Section 302 of the Taft-Hartley Act, 29 U.S.C. §186.[1]

STATEMENT OF THE CASE

Since the issue of the material facts before the Court are essential and relevant, Seafarers respectfully restate the facts.

A. *THE DECISION OF THE DISTRICT COURT*

The court granted Seafarers' motion for summary judgment on December 12, 1974. The original complaint in this matter was filed on June 1, 1973 against the Trustees of the Seafarers Pension Plan domiciled in the State of New York seeking pension for disability by Bourgeois, an employee of various steamship lines, formerly covered by the Plan, for back pension and damages for disability occurring in June, 1963. Seafarers filed a motion for summary judgment on the grounds that Bourgeois' right of action had prescribed by the passage of ten years or was barred by laches. Seafarers later filed a supplemental motion for summary judgment for failure to state a claim, by reason of Bourgeois' disqualification under an express exclusion of the Trust Plan since he was disabled as a result of military service and was receiving a military disability pension. Bourgeois died and his widow

---

1. See Appendix A.

and major child were substituted as parties plaintiff in a supplemental and amending complaint filed by new counsel. This complaint added an additional claim for death benefits. Seafarers filed a second supplemental and amended motion for summary judgment alleging that by virtue of the provisions of the Plan the laws of New York were applicable to the Plan and under the laws of New York the action was barred by the New York statute of limitations or alternatively by Louisiana law on prescription that the action was barred by laches since Bourgeois was seeking to reform the provisions of a trust instrument and further that the complaint failed to state a claim by reason of the fact that the claim had been disallowed because the disability arose by reason of military service and Bourgeois was drawing military pension. Additional affidavits and documentary exhibits were filed. Originally at the hearing on December 11, 1974, the court orally indicated:

> "All right. As I stated previously, I feel New York law applies in this case.
>
> I think there are several possible bases for supporting the granting of a summary judgment in this case, and I will furnish full written reasons shortly; . . ."

The court then went on to indicate that it felt the New York statute of limitation of 6 years was applicable and began to run in August, 1964. Later in its written reasons, the court concluded, on the basis of complete and uncontested evidence before it, that the complaint failed to state a claim by reason of the express provisions of Article I Section 8 of the Pension Regulations which provided that a disability pension would not be payable for any disability resulting from

service in the Armed Forces of the United States if a military pension was payable therefor; the Bourgeois had applied for and was receiving a military pension for disability resulting from service in the Armed Forces prior to his applying for a pension from Seafarers. Petitioners have treated both grounds in their brief.

B. *THE CREATION AND COMPOSITION OF THE SEAFARERS PENSION PLAN*

Originally the Seafarers Welfare Plan was created by an Agreement and Declaration of Trust on July 1, 1950 through a trust instrument executed by various employers of members of the Seafarers International Union and the Union. In this document the trustees were given authority to create a separate Seafarers Pension Plan. On September 20, 1961, in a separate Agreement and Declaration of Trust, the trustees established this pension plan for the sole purpose of paying annuities or pensions to eligible pensioners and a death benefit for eligible pensioners, and provided for rules and regulations for the Pension Plan and the maintenance of adequate reserves based on actuarial reviews. It also specifically provided that in accordance with the provisions of the original Welfare Plan that the Plan was accepted by the trustees in the State of New York and all legal issues and questions arising thereunder would be construed and decided in accordance with the laws of the State of New York. Both Plans are so-called Taft-Hartley trusts, Section 302, 29 USCA 186, that is, they are bilaterally administered by an equal number of employer and union trustees who establish, interpret and administer the plans. For such trust plans to exist there must be collective bargaining agreements negotiated between the various employers and the union which in turn spells out the rate of contribution per employee per day

of employment for that particular employer to the Plans. No employee makes contributions from his wages and all funds are contributed solely by contracting contributing employers. Originally from 1950 until the adoption of the Seafarers Pension Trust in 1961 all contributions were made to the Seafarers Welfare Plan. After the creation of the Pension Trust Plan a certain percentage of the contributions was allocated to this Pension Plan to pay pensions and death benefits for pensioners. Commencing with the Welfare Plan in July, 1950, the original rate was 25¢ per day slowly increasing the $1.75 per day by October, 1961. The Plans are supervised by the Superintendent of Insurance of the State of New York. The New York statute of limitations for suits of this nature is Section 213 of the New York Civil Practice Law and Rules which went into effect on September 1, 1963. The Pension Regulations, originally adopted at the time the Pension Plan was created in 1961 and in effect at the time that it first applied to Bourgeois and still in effect when he became disabled, provided for certain minimum requirements of credited past service and continued service when permanent and total disability occurred. (Less than for normal retirement). To be eligible for a disability pension after permanent and total disability it was necessary that the applicant have pension credits for at least 4,380 days of covered employment (12 years), 90 days of employment in the last calendar year and at least one day in the six months preceding his application. There is no age requirement for disability. Bourgeois met these requirements. Specifically the Plan provided, at the time it was created with respect to all employees covered, in Article I Section 8:

> "Military Pension. A disability pension shall not be payable for any disability resulting from service in the Armed Service of the United States if a military disability pension is payable therefor. No disability pension shall be payable for any disability resulting from service in the Armed Forces of any other country,"

There has been no change in this provision.

The disability provided for was $150.00 per month through the year 1963.

The Pension Plan also provided for death benefits only if the pensioner died during the period while continuing to draw a pension and specified amount. Beneficiaries had no vested rights to the benefits except through the fulfillment of all the conditions and requirements set forth in the regulations. At the time of the creation of the Pension Plan, Bourgeois was given credit for 10 years of his past years of service prior to 1961 in accordance with the provisions of the Plan, served two more years and at the time of the determination of his disability had sufficient number of years and sufficient number of days coverage and was otherwise eligible at the time he applied in 1963 except for the disqualification because of disability resulting from military service, as previously determined by the Veterans Administration and the payment of the military pension.

C. *FACTS AS TO CLAIMANT*

The original plaintiff, William Bourgeois, was discharged from the Del Sud, a contracted vessel, making contributions on him, on June 2, 1963. He did not make application for pension benefits until December 11, 1963 and alleged that his last day of sailing was June 6, 1963. He had apparently previously consulted his own physician and made a claim for

military pension through the Veterans Administration. He was awarded $288.00 per month for service connected disability back to July, 1963. Prior to making application for the Seafarers Plan benefits he had himself examined by Dr. Middleton of the New Orleans Medical Clinic, one of the doctors for the Plan, who found that he was disabled because of progressive heart disease caused by rheumatic fever that he had developed, was hospitalized for a period of 17 months while serving in the United States Navy in 1943, and had been discharged as disabled then. He was notified that his claim for benefits was denied in January, 1964 by the Administrator. After request for reconsideration, the Trustees finally denied the claim on August 5, 1964 because his disability resulted from military service and he was receiving a military pension. Subsequently after his death, Mrs. Bourgeois, his surviving widow, was denied a death benefit because he was neither a pensioner nor an employee within the eligible period of time entitling her to death benefits.

REASONS FOR DENYING THE WRIT

ARGUMENT 1. *There is no substantial federal question here involved.*

The only statute properly before the Court is Section 302 of the Taft-Hartley Act, 29 U.S.C. §186. The provisions of this statute with respect to employee benefit plans, including pensions, health and welfare, and death benefits, with the exception of the requirement that such plans be controlled by an equal number of employer and employee trustees in order to receive contributions from employers, were substantially amended, succeeded and replaced by the Employee Retirement Income Security Act of 1974, Public Law 93-406, 88 Stat. 829, Title 29 §1001, passed September 2,

1974, as amended by Public Law 94-12, Title 4 402, 89 Stat. 47, Title 26 § 410, passed November 29, 1975.

ARGUMENT II. *The district court had all of the material facts before it when it granted summary judgment.*

The court on the basis of the voluminous affidavits and exhibits presented to it had a complete record before it. There was no genuine issue of material fact raised by the complaint or counter affidavit. All of the evidence available concerning the establishment of the Pension Plan, Bourgeois' entitlement to a pension, the documents and rulings of the Trustees forming the basis for his disqualification were before the court. These included the Interrogatories and Answers to Interrogatories with attached exhibits, the Trust Agreement and Plan, the sailing time records, last discharge documents and total payments made on his account, the records of the Veterans Administration showing payment of a total disability benefit in the sum of $288.00 per month beginning in August, 1963, Dr. Middleton's letter of October 31, 1963 disgnosing progressive heart disease from rheumatic fever incurred in military service, the original letter denying benefits of January 30, 1964, the action of the Trustees on reconsideration of August 5, 1964, and the reasons for the denial, the application of Bourgeois for benefits, and the history, nature of the Plan, effective date and New York law.

Although given an opportunity to do so, the survivors of Bourgeois countered only with an affidavit, alleging sketchy facts, to the effect that he had suffered from rheumatic fever since he was 5 years old; that he was discharged from military service with a disability, receiving a pension of

$19.00 per month, that the union and the Pension Plan had knowledge of his condition or disability and that he had been informed that he would be eligible to receive a normal or disability pension despite this and believed that his disability had been waived and he was building time toward a pension.

Bourgeois began sailing in 1951 before the Pension Plan was established in 1961. He was given credit for unearned past service, as were all others, in his case 10 years when the Plan was originally established. Regardless of his previous childhood history of rheumatic fever or obvious partial disability pension from the military service which he drew while sailing, this did not disable him from sailing. The Plan when created in 1961 contained the express provision disqualifying otherwise eligible employees only if they were disabled as a result of and actually drawing military pensions for total permanent disability. Bourgeois had actual or constructive knowledge of the provisions of the Plan since such plans must be published to participants under the provisions of the Welfare & Pension Plan Disclosure Act, 29 USC 301 et seq., passed in 1958. Such express written provisions of the Plan which interdependently affect all beneficiaries could not be waived by oral representations, if they were actually made, to the deceased Bourgeois. While sailing Bourgeois received coverage under the Welfare Plan and was covered by the Pension Plan fully making him eligible either for a normal pension at age 65 had he been able to serve the required time or for a disability pension had he been disabled for reasons other than as a result of military service and secondly, actually receiving a military pension. The counter facts alleged by Petitioners in the affidavit were not material to the decision of the Court. Quite obviously the court did not consider the mere allegation although made in an affidavit that

some unknown individuals or representatives of the union had promised the deceased a pension could in any wise vary the express written provision of the Trust Plan disqualifying Bourgeois from receiving a pension and the action of the Trustees in applying this could be waived other than by formal action of the Trustees. This was never alleged.

ARGUMENT III. *The provisions of the Plan and the Trustees' action in applying it were neither arbitrary nor capricious.*

Petitioners dispute the district court's conclusions that the Trustees correctly found that Bourgeois' disability resulted from service in the Armed Service of the United States.

Article I Section 8 of the Seafarers Pension Regulations provide:

> "A disability pension shall not be payable for any disability resulting from service in the Armed Forces of the United States if a military pension is payable therefor."

Two conditions for disqualification must be made. One, the disability must be one resulting from service in the Armed Forces of the United States, and two, the employee must be receiving a military disability pension. It is admitted that Bourgeois was declared eligible effective in August, 1963 to receive a $288.00 per month disability pension resulting from disability occurring from service in the Armed Service. We respectfully suggest that the argument on this is purely one of semantics. Petitioners' argument is that the proper interpretation of this clause by the Trustees should have been "the disability must have resulted from service in the Armed

Forces of the United States." Petitioners alleged that both the Trustees and the district court were in error in this finding that Bourgeois' disability *resulted* from service in the armed Forces. They admitted that the record shows that Bourgeois was discharged from the Navy and was awarded a service connected partial disability pension. They challenge the findings of the district court that Dr. Middleton had found that Bourgeois was disabled "by reason of rheumatic fever acquired while in service of the United States in 1943". The entire argument is predicated upon the fact that they were prepared to show that Bourgeois had had rheumatic fever as a child. The pertinent findings of Dr. Middleton were as follows:

> "The above captioned patient states that in 1943, while serving in the United States Navy he developed rheumatic fever and was hospitalized for a period of seventeen months. He was subsequently discharged with a one hundred percent service connected disability, and he continues to draw this compensation.
>
> Diagnosis: 1. Rheumatic heart disease, inactive
> a. Mitral stenosis and insufficiency
> b. Intermittent auricular fibrillation
> c. Early congestive failure
> 2. Obesity
>
> It is my opinion that this man's heart disease is progressive and the presence of intermittent auricular fibrillation, which is controlled only with large doses of quinidine and digitalis, make it a hazard for this man to sail aboard ship where

> medical care is not immediately available. He should be retired from sea duty; however, I do not feel that he is totally incapable of performing all types of work."

Petitioners do not challenge the doctor's diagnoses, only the interpretation of the Trustees and the court in finding that his disability resulted from service in the Armed Forces. The Trustees acted only after the award to Bourgeois of veterans' disability pension. The provisions of 38 USC 331 read:

> "For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a pre-existing injury suffered or disease contracted in line of duty, in the active military, naval, or air service, ..."

The argument of Petitioners is that the disability of Bourgeois was service connected rather than resulting from service in the Armed Forces of the United States. We submit that it is obvious that the Trustees applied the same interpretation as the statute and as the Veterans Administration does, that is, that his disability ultimately resulted from disease acquired or aggravated while in the service of the United States. The second test applied by the Plan was also satisfied. He was collecting a military service disability pension. Evidence of pre-existing disease which did not disable him from serving in the Armed Forces or prevent him from sailing after he got out of the Armed Forces was immaterial and irrelevant.

ARGUMENT IV. *The court below properly decided the case on the evidence before it and*

properly applied the law prevailing in Louisiana and New York and in the federal courts that Bourgeois was disqualified.

Bourgeois, the claimant, after his discharge from the Navy, began sailing in 1951 and sailed for 10 years until 1961 when the Pension Plan first was created. He was given credit for past time served, including his years from 1951 to 1961. After he had sailed 2 additional years, Bourgeois was eligible for a disability pension if the disability had been incurred as a result of other than military service and he had not been awarded a military pension. Bourgeois' rights clearly did not vest since the Pension Plan provisions disqualified him. It is the universal rule that Pension rights do not vest until the man has actually reached retirement age or is eligible for other reasons for retirement. The rule is clearly set forth in New York in *Kristt vs. Wheland*, 164 NYS 2d 239 (Appeals Division), affirmed 181 NYS 205 (1957), that when the right exists in the trust indenture the trustees may amend and change benefits until such benefits vest as provided in the trust agreement. The same rule has been followed in Louisiana in *State of Louisiana ex rel Murray vs. Board of Trustees of the Police Pension Fund for the City of New Orleans*, 259 So. 2d 613, La. App. 4th Cir. 1972, and *Bowen vs. Board of Trustees of the Police Pension Fund*, 76 So. 2d 430, Ct. App. Orl. 1954. Bourgeois therefore was not deprived of any rights when the Plan as originally created disqualified him. Consequently under the applicable law of either jurisdiction, Bourgeois had no vested rights unless and until such time as he became disabled for reason other than as a result of military service or reached the normal retirement age. In interpreting these funds the federal courts likewise have followed the rules set forth above. Where the terms of the

documents set out the rules for vesting these have been followed strictly by the court. *Lowenstern vs. I.A.M.*, 479 F. ed 1211 (CA 2, 1973); *Schneider vs. McKesson & Robbins, Inc.*, 254 F.2d 827 (CA 2, 1958); *Knoll vs. Phoenix Steel Corp.*, 465 F.2d 1128 (CA 3, 1973). The federal courts have even allowed alterations in eligibility in order to preserve the funds. *Gaydosh vs. Lewis*, 410 F.2d 262 (CA DC 1969).

Nor was the action of the Trustees acting on the same information available to the court in anywise unreasonable, subject to question, or arbitrary or capricious. While the rulings of the Board of Trustees with respect to eligibility and in the administration of the fund are ultimately subject to court review where they have acted properly in making the regulation or interpreting the regulation, the courts will affirm their ruling. *Gomez v. John L. Lewis*, et al., 414 F.2d 1312 (CA 3, 1969) and the same rule is in effect in New York, *Gittelson vs. Dupont*, 215 N.E. 2d 336, and substantially followed in Louisiana, *Davis v. Humble Oil & Refining Co.*, 283 So. 2d 783 (1st Cir. 1973).

CONCLUSION

For the reasons outlined above, Respondents Seafarers respectfully suggest that the application for writs be denied.

Respectfully submitted,

C. PAUL BARKER
DODD AND BARKER
A Law Corporation
1400 Richards Building
New Orleans, Louisiana 70112

OF COUNSEL
HOWARD SCHULMAN
SCHULMAN, ABARBANEL &
SCHLESINGER
350 Fifth Avenue
New York, New York 10001

Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of August, 1976, copies of the Opposition to Petition for Writ of Certiorari were mailed to counsel for Petitioners. I further certify that all parties required to be served have been served.

C. PAUL BARKER

§ 186. Restrictions on payments and loans to employee representatives, labor organizations, officers and employees of labor organizations, and to employees or groups or committees of employees; exceptions; penalties; jurisdiction; effective date; exception of certain trust funds

(a) It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value—

(1) to any representative of any of his employees who are employed in an industry affecting commerce; or

(2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce; or

(3) to any employee or group or committee of employees of such employer employed in an industry affecting commerce in excess of their normal compensation for the purpose of causing such employee or group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing; or

(4) to any officer or employee of a labor organization engaged in an industry affecting commerce with intent to influence him in respect to any of his actions, decisions, or duties as a representative of employees or as such officer or employee of such labor organization.

(b) (1) It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a) of this section.

(2) It shall be unlawful for any labor organization, or for any person acting as an officer, agent, representative, or employee of such labor organization, to demand or accept from the operator of any motor vehicle (as defined in part II of the Interstate Commerce Act) employed in the transportation of property in commerce, or the employer of any such operator, any money or other thing of value payable to such organization or to an officer, agent, representative or employee thereof as a fee or charge for the unloading, or in connection with the unloading, of the cargo of such vehicle: *Provided*, That nothing in this paragraph shall be construed to make unlawful any payment by an employer to any of his employees as compensation for their services as employees.

(c) The provisions of this section shall not be applicable (1) in respect to any money or other thing of value payable by an employer to any of his employees whose established duties include acting openly for such employer in matters of labor relations or personnel administration or to any representative of his employees, or to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his service as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided*, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which

shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; or (6) with respect to money or other thing of value paid by any employer to a trust fund established by such representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs: *Provided*, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds.

(d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.

(e) The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 381 of Title 28 (relating to notice to opposite party) to restrain violations of this section, without regard to the provisions of section 17 of Title 15 and section 52 of this title, and the provisions of sections 101–115 of this title.

(f) This section shall not apply to any contract in force on June 23, 1947, until the expiration of such contract, or until July 1, 1948, whichever first occurs.

(g) Compliance with the restrictions contained in subsection (c) (5) (B) of this section upon contributions to trust funds, otherwise lawful, shall not be applicable to contributions to such trust funds established by collective agreement prior to January 1, 1946, nor shall subsection (c) (5) (A) of this section be construed as prohibiting contributions to such trust funds if prior to January 1, 1947, such funds contained provisions for pooled vacation benefits.